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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,998	03/30/2004	Edward J. Ellis	VIS-0008-P2	6070

23413 7590 05/31/2007
CANTOR COLBURN, LLP
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EXAMINER

AUDET, MAURY A

ART UNIT	PAPER NUMBER
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1654

MAIL DATE	DELIVERY MODE
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05/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/813,998

Applicant(s)

ELLIS ET AL.

Examiner

Maury Audet

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/6/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 10, 13-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 12 and 17-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's response of 3/6/07 is acknowledged. Claims 1-24 are pending. Claims 10 and 13-16 are withdrawn. Claims 1-9, 11-12, and 17-24 are examined on the merits. Due to the new grounds of rejection (112 2nd), the present action is made NON-FINAL. It is noted that the other rejections have fallen, and that Applicant's arguments are presently deemed persuasive. An updated exhaustive *text-based* search for glycomacropptides (GMP's), as well as glycopeptides (as distinct from glycoproteins based on size, as argued by Applicant's) has been undertaken, wherein no prior art of record has been uncovered which is deemed to anticipate or render obvious the present invention. However, the invention is to peptides, which are structural in nature. It is this structure, specifically a core structure, which is at issue; such that this core may be structurally searched in combination with a text-based search of the invention. As claimed and described in the present specification, this is not possible; however, and the structure of the claimed compounds is at issue.

Claim Rejections - 35 USC § 112 2nd

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9, 11-12, and 17-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, is maintained for the reasons of record.

It is unclear what the structure of the claimed glycomacroprotein(s) (GMP) constitutes (specifically a substantial core structure which is present in all such GMPs, that is coextensive

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with all GMPs, which may be searched by structure). Applicant has added a new claim 24 to define that the GMP is 50 amino acids or less, but the structure as to the oligosaccharide compounds and where such are attached has not been distinctly claimed. Thus, a reasonable search and examination of the invention has not been able to be carried out (other than a text-based search merely by name of this peptide structure-based invention). It is suggested that new claim 24 and the oligosaccharide/carbohydrate content/structure in relationship to the peptide be distinctly claimed in the independent claim.

Additionally, it is unclear whether Applicant is synthetically altering the above compounds or only isolating it from milk/milk byproducts. A request for clarification on this point is requested in the context of the issue surrounding the structure of the peptides to be used in the present invention.

Conclusion

No claims are allowed.

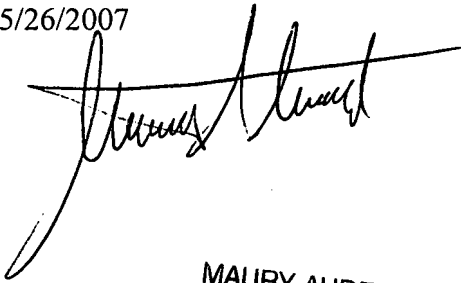
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maury Audet whose telephone number is 571-272-0960. The examiner can normally be reached on M-Th. 7AM-5:30PM (10 Hrs.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA, 5/26/2007

A handwritten signature in black ink, appearing to read 'Maury Audet', written over a horizontal line.

MAURY AUDET
PATENT EXAMINER